IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.Rev.Pet.No. 980 of 1999()

CRA.278/1997 of ADDL. SESSIONS COURT, THRISSUR
CC.410/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER:

SUSHIL,
S/O. CHAKKI SUGUNAN,
CHILANKA BEACH,
THALIKULAM VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 4518/1999 IN CRL.R.P. NO. 980/1999

DISMISSED

28.05.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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CRL. R.P. NO. 980 OF 1999

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Dated this the 28th day of May 2007

O R D E R

The revision petitioner, who is the accused in C.C. No. 410/94, stands convicted for the offences under Sections 326, 324 and 341 r/w Section 34 of the Indian Penal Code. The 2nd accused is absconding. A1/revision petitioner is sentenced to, as modified by the appellate court, undergo simple imprisonment for six months and to pay a fine of Rs.3,000/- and in default to undergo simple imprisonment for two months for the offence under Section 326 IPC. No separate sentence is awarded for the rest of the offences.

2. The prosecution case is that on 27.08.1994 at about 11 a.m. the defacto complainant was wrongfully restrained by the accused and both the accused beat him with iron rods. The evidence adduced in the matter consisted of the testimony of PWs 1 to 8, Exts. P1 to P5 and MO1, iron rod. PW1 is the injured. PW2 is the occurrence witness. PWs 4 and 5, two other

occurrence witnesses turned hostile. PW6, doctor, who issued Ext.P3, wound certificate has proved the same. It is mentioned therein that PW1 sustained dislocation of the right ulna and fracture on the patella of left knee. It is also mentioned in Ext.P3 that he was referred to the Medical College Hospital. The crime was registered on the same day.

3. It is the contention of the counsel for the revision petitioner that the name of PW2, the eye witness who supported the prosecution is not mentioned in Ext.P1, FIS and the nearby shop keepers have not been examined. It is seen from the FIS that the names of PWs 4 and 5 has been mentioned. It is also mentioned in the FIS that others were also present at the scene of the occurrence. I find that the name of PW2 is not mentioned in the FIS cannot be taken as a ground to disbelieve the version of PW2. As already noted, there is no delay in recording the FIS. The incident had taken place at 11 p.m. and the FIS was recorded at 5 p.m. It may not be possible to notice the persons present when a person is being attacked. The evidence of PWs 1 and 2 is not vitiated by any pronounced infirmity. No

contradictions in the evidence have been brought out with respect to the previous statement. In the circumstances, I find that the findings of the courts below is supported by proper reasons. The injuries sustained are very serious in nature and includes fracture. Hence, the conviction for the offences mentioned is only to be sustained. The conviction is confirmed.

4. So far as the sentence is concerned, the counsel for the revision petitioner has pleaded for leniency pointing out that revision petitioner then was aged only 19 years and the fracture to the ulna was not on account of beating by A1. The evidence is that A2 beat PW1 on the hands and PW1 hit him on the leg. The common intention is alleged and found. I find that the above contention cannot be taken as a mitigating factor. All the same, considering the fact the incident has taken place more than 10 years ago and that the accused was facing the proceedings so far, I find that the sentence is to be modified. Hence, the sentence is modified to undergo imprisonment till the rising of the court and to pay a fine of Rs.5,000/- for the offence under Section 326 IPC and in default to undergo simple imprisonment

for two months. He is also sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.20,000/- to PW1 vide Section 357(3) Cr.P.C and in default to undergo simple imprisonment for two months for the offence under Section 341 IPC. He is also sentenced to undergo imprisonment till the rising the court and to pay a compensation of Rs. 15,000/- to PW1 vide Section 357(3) Cr.P.C and in default to undergo simple imprisonment for one month for the offence under Section 324 IPC. The fine amount, if realised, shall also be paid to PW1. The revision petitioner is granted one month's time from today onwards to remit the amount of compensation and fine as ordered. The revision petitioner shall appear before Judicial First Class Magistrate, Chavakkad on **29.6.2007** to receive sentence.

The Crl.R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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